



March 7, 2008

Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington D.C. 20554

RE: WC DOCKET No. 07-245

Implementation of Section 224 of the Act; Amendment of the Commission's  
Rules and Policies Governing Pole Attachments

The Empire District Electric Company of Joplin, Missouri strongly believes the proposals raised in this Notice of Proposed Rulemaking (NPRM) could have significant economic and operational impact on the pole attachment practices of the electric utility industry. Therefore, we wish to submit comments regarding the following.

A. Rates

For electric utilities, a critical electric infrastructure exists in order to perform our core mission, which is: providing safe, reliable electric service to consumers at a just and reasonable rate. This same infrastructure also provides cable television, telephone and other attachers a very valuable physical network to provide their services to their customers. However, under the existing rules of the FCC, the electric utilities bear a disproportionate amount of the costs of owning and maintaining this infrastructure because the existing pole attachment rates do not provide a fair allocation of these costs among all beneficiaries of the infrastructure. This results in subsidies at the expense of the electric utility; which in turn becomes the expense of its electric consumers. The electric consumers are bearing this expense even though they may not be a customer of the attachers. This is not fair to the electric consumer.

There are a large number of "unauthorized" or "unreported" attachments which are often unsafe and can pose a serious threat to the reliability of the electric infrastructure. These "free ride" attachments provide an additional subsidy. Under existing FCC regulations there is nothing to deter these attachers from this practice. In fact, these attachers have an economic incentive to do so. This practice can give the attacher an unfair competitive advantage.

When the Commission set the original formulas for the attachment rate, the cable and telecommunications carriers were in their infancy. Many now have become "giants" in the telecommunication industry offering not only cable television, but also internet service, video on demand and telephone services. The Commission can enhance competition by eliminating these subsidies.

We ask that all attachers be required to pay fair rates that reflect the full benefits they receive from the electric infrastructure - nothing more, nothing less. To an extent, both electric and telecommunications providers require the same facilities to support their attachments. While a cable system or telecommunications carrier may occupy one or two feet on the electric utility's pole, those attachments would be useless without the rest of the pole in place. All must have poles that are of sufficient height and strength to comply with safety and engineering requirements. All depend not only on the electric infrastructure, but also on routine maintenance, including tree-trimming, right-of-way clearing and safety inspections. At this time, the costs and operations responsibilities fall on the electric utilities. We recommend that these costs be more fairly allocated.

## B. Access

We know that it is in the public interest for the electric utility industry to accommodate pole attachments needed for existing and expanding telecommunications networks. Responsible use by all parties of the electric utility infrastructure can avoid duplication of facilities and can reduce costs to the consumers. Generally, the electric utility industry is not engaged in broadband services to the public and therefore; has no interest in competing in the communications markets or in achieving any competitive advantage over telecommunications carriers. However, the electric utility industry is concerned that while it provides non-discriminatory access to the telecommunications carriers, those very attachers do not necessarily play by the rules. Unauthorized or unreported attachments and those being installed out of compliance can give the telecommunications carrier an unfair competitive advantage over its more compliant competitors. The fact that these attachments have not been approved by the electric utility can also pose serious safety and reliability threats to the critical electric infrastructure.

### 1. Safety and Reliability

We have concerns regarding the "unauthorized" or "unreported" attachments as stated previously. An unauthorized attachment is one made without an approved application from the electric utility. In some cases, the attachment is made by a company that has no pole attachment agreement with the utility. In other cases, the company has an agreement, but never provides an application for permission to allow the attachment. Therefore, the attachments are never inspected to determine if there is sufficient capacity or if "make ready" is required to insure the attachments comply with all safety, reliability and engineering requirements. To avoid any threats to safety and reliability, all attachments must be made in compliance with all applicable notices and engineering requirements and standards. Recent inspections and inventories have shown a significant number of all attachments made by cable and telecommunications carriers are unauthorized.

Also, in addition to the unauthorized attachments, we also face a problem with the attachments (both unauthorized and permitted) not being installed in compliance with the safety codes and engineering standards. These violations can pose a threat to safety of the electric workers, the communications workers and the general public. This can also cause a threat to the reliability of the entire infrastructure.

## 2. Enforcement

There is a very simple reason why there are so many unauthorized and unsafe attachments being made by the communications companies. This is simply because they have an economic incentive to make the attachments as soon as they can. The communications companies' top priority is providing communications services, not electric safety and reliability. Under current regulations, it is very difficult for us to deter such behavior. It seems that they have made a calculated decision that the competitive advantage they gain is worth the risk of paying back rental charges and modest penalties at some time in the future, if at all. Additionally, the workers installing the attachments are often contractors paid on a per attachment basis. They have no interest in assuring that attachments are installed according to the NESC and the electric utility's standards. They are only interested in installing the attachments as quickly as possible and collecting their pay.

## 3. Engineering Standards

The Commission was correct in determining that the Pole Attachment Act gives the utility right to deny access on a nondiscriminatory basis "for reasons of capacity, safety, and applicable engineering purposes". However, the Commission has acknowledged its lack of expertise in these matters. The electric utility industry is subject to many Federal and State regulations that affect the installation and maintenance of pole attachments. The National Electric Safety Code (NESC) is a standard that was developed by a process including both the electric utilities and the communications companies. We urge that the Commission establish the NESC requirements as just and reasonable. We also have adopted specific standards to accommodate various geography and weather requirements. We ask that the Commission defer to state regulations and the electric utilities with regard to this matter.

Empire suggests that the practices regarding "boxing" and extension arms should be considered by the utility on a case-by-case basis. We feel that this is more of an engineering issue. A full pole loading analysis must be conducted and the age and size of the pole must be considered. The practice of "boxing" or extension arms should only be permitted when it can comply with the NESC and the electric utility's standard construction practices. It would be difficult to maintain the NESC requirement of 40-inch vertical separation between communications and electric lines using either method. Further, boxing and extension arms would create climbing hazards for the electric utility linemen when trying to climb past the attachments to work on the electric cables above. We agree with Verizon that boxing "greatly complicates pole replacements, removals and transfers....". It can "make it more difficult to gain access and to work on the attachment immediately above and below the bracket".

## 4. Timeframe

Mandating a 30 day requirement for electric utilities to complete inspections and a 45 day after payment requirement for completion of make-ready work would definitely cause a hardship on the utilities. The FCC has declined to impose the 45 day deadline for make-ready in the past. Currently, the rules require that we process applications within 45 days and complete make-ready work with reasonable and nondiscriminatory timeframes. If it were to be mandated that we must complete the make-ready within a 45

day timeframe, the whole electric infrastructure could suffer along with the electric consumers, both new and existing. There are too many variables to be considered to allow such a ruling.

We do recognize that the make-ready and the inspections are time sensitive and we are committed to supporting reasonable expectations. However, that being said, we cannot simply delegate that responsibility to the attaching entities. We are primarily liable for violations of the NESC on poles we own and we have a duty to our customers to ensure the reliability of our infrastructure. Delegating the inspections and the make-ready work to third party contractors would relinquish an amount of control over our own property. We urge that the Commission not require electric utilities to use third-party contractors to approve the inspections and make-ready. However, electric utilities can be allowed to do so on a voluntary basis as is currently stated by the Commission.

#### 5. Drop Poles

Empire opposes the granting of attachments to drop poles without prior approval. Utilities should be able to decide this on a non-discriminatory basis, but the FCC does not need to impose such a rule. The NESC treats drop poles the same as other poles as far as pole attachments are concerned. Some of the drop poles support primary conductors and others support secondary or both. Many contractors who install telecommunications attachments are not aware of the difference in the appearance of primary and secondary electrical conductors and can and do put themselves and the public in danger when installing service drop attachments prior to an inspection by the electric utility. We also agree with Verizon in that the prior approval ensures that the attaching entity “does not install drop lines in a pole space already granted to another attacher,” and also “ensures that the pole attachments do not exceed the maximum permissible load”.

### C: ILEC Attachments

When originally enacted, Section 224 was intended solely to address pole attachment rates paid by cable television providers. The Telecommunication Act of 1996 expanded Section 224 to encompass pole attachments by competitors to ILECs, but did not grant pole attachment rights to ILECs themselves. There have been federal court decisions that have interpreted the 1996 Act to exclude ILECs as entities entitled under Section 224. Also, the Commission has made several statements in the past indicating that it interpreted the intent of the Act was to exclude ILECs from the entities entitled under Section 224. Even the ILECs themselves have acknowledged this exclusion in filings before the Commission.

The existing arrangement of joint use agreements between Empire and ILECs is long standing and working with regard to the attachments they cover. These agreements were freely negotiated and entered into by both parties as pole owners. These agreements reflect the fact that each party has an ownership interest in the pole plant. Each is regulated under state and local laws and regulations, including franchise agreements.

We now have had a decade of experience with the pole attachment rules under the 1996 Telecommunications Act. While perhaps a “few simple tweaks” to the current rules as stated by Commissioner Copps could be beneficial, we ask that the Commission seriously

consider all aspects of this NPRM. While the future needs of the telecommunications industry are growing and changing rapidly, its achievements should not come at the expense of the electric utilities or their consumers.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelly Walters", with a stylized, flowing script.

Kelly Walters  
Vice President  
Regulatory & General Services